IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.4331 OF 1993.

Trilokchand Shantilal Badjate : Petitioner

versus

Surendralal Ramanlal Patni : Respondent.

Mr.R.M.Agarwal for the petitioner.

Mr.S.G.Deshmukh for the respodent.

CORAM : D.G.DESHPANDE, J.

DATED : November 06, 2006.

ORAL ORDER (IN CHAMBER) :-

1. Heard learned advocate Mr.Agarwal appearing for the petitioner and learned advocate Mr.Deshmukh appearing for the respondent.

2. Petitioner is the landlord and respondent is the tenant under the Bombay Rent Act. The petitioner filed a civil suit before the Civil Judge, Senior Division, Malegaon for eviction on the ground of arrears of rent, non-user and bonafide requirement. Regarding arrears of rent,

it was the case of the petitioner that defendant/respondent was in arrears of rent for 52 months at the end of May 1982. Therefore, the petitioner/plaintiff issued a notice on 9.6.1982 and demanded the arrears of rent. The defendant did not pay the rent within one month but filed miscellaneous application for fixation of standard rent. The rent was demanded at Rs.40/- per month.

3. Secondly, the defendant's business had come to an end by June. He was not carrying on any business there. The premises was admeasuring 10 ft. x 10 ft. He was not in need of the premises. Regarding bonafide occupation, it was the case of the plaintiff that he had five sons. Three of them had become major and the elder son Ramesh had married and had got one daughter. Ramesh wanted to start independent business, but for want of premises, he could not do so and, therefore, the premises were required for bonafide occupation of the plaintiff and his family members.

4. The defendant filed his written statement and denied that he was in arrears of rent of 52

months. He also denied that he did not pay rent within one month of receipt of the notice. He also denied that his business had come to an end and he also denied the bonafide need of the landlord/plaintiff. According to him, the standard rent was Rs.30/- and he has deposited the same in the court.

5. The trial Court framed issues, the parties led evidence and even though court concluded that need of the landlord was bonafide, prayer for eviction was rejected on that ground because of the comparative hardship between the landlord and tenant. The suit was ultimately dismissed. The landlord filed appeal. The appeal was also dismissed and, therefore, this petition.

6. At the outset the learned advocate Mr.Agarwal, appearing for the petitioner, pointed out that the plaintiff has filed an affidavit dated 17.7.2001 in this petition along with the photographs and the schedule of the payment made by the respondent from time to time. He contended that there is no reply to this affidavit and he also contended that from the

photographs it will be clear that son of the plaintiff/landlord was doing their business on otla for want of premises.

7. Though, the trial court has come to the conclusion that the plaintiff has succeeded in making out a case of bonafide occupation, the appellate court upset that findings on the grounds wholly unsustainable in law, according to Mr.Agarwal. My attention was drawn to the para 9 of the judgment of appellate Court, particularly to the following portion :-

> "According to him, (i.e. the son of landlord), for want of shop premises he is unable to start his own business. He has deposed that he is Graduate and now, he intended to start the business in the premises occupied by the defendant. Therefore, while considering the bonafides on the part of the plaintiff landlord his initial case was that his son Ramesh wants to start the business and he has not adduced the evidence of said son Ramesh but, examined Suresh. Therefore, when if really it was the

> intention of his son Ramesh to have his own business then it was incumbent on behalf of the plaintiff to establish and prove that his son Ramesh really wants to start his business if the premises occupied by the defendant received by him. Therefore, there is no cogent and convincing evidence on record about the bonafides of the plaintiff. It is the evidence that notice was given in the year 1982 and the suit has been filed in the year 1985. In the notice there was no reference that premises was required by the plaintiff for the particular purpose and for the particular son."

Further the appellate Court has, in the same paragraph, observed as under :-

> "I am of the view that there are no particulars given about the actual business in the notices as well as from the perusal of the plaint itself it is clear that no specific purpose of the business is also mentioned..... I am of the view that considering the

> evidence on record and the deficiencies referred to above in the evidence about non-mentioning anything in the evidence about the particular business or for the absence of any specific pleadings in the plaint about the requirements, the learned Judge in my opinion erred in observing that the requirement of the landlord is bonafide one."

. According to Mr.Agarwal, these findings are totally perverse and, therefore, are liable to be set aside.

8. Learned advocate Mr.Agarwal, appearing for the petitioner, relied upon one authority in support his contention. He also contended that the findings of the Court below that the suit filed three years after giving the notice and, therefore, ground of bonafide requirement was not genuine, proper, sincere and honest, is also perverse. He drew my attention to the decision of the Supreme Court in the case of **Raghunath G. Panhale (Dead) by LRS. v/s. Chaganlal Sundarji and Co., reported in (1999) 8 SCC 1** wherein the Supreme Court has held that bonafide requirement

does not mean dire or compelling necessity. Then my attention was drawn to the judgment of the Supreme Court in the case of **Ramkubai (Smt) Deceased by LRs. and ors. v/s. Hajarimal Dhokalchand Chandak and ors. reported in (1999) 6 SCC 540.** In that case also the bonafide requirement was to establish kirana business for the landlord's son. The contention was rejected by the appellate Court and the High Court on the ground that another son was carrying on same business. The Supreme Court held that for this reasons, the other son could not be disentitled to establish his own business.

9. Mr.Agarwal, the leaned advocate appearing for the petitioner, drew my attention to the decision of Supreme Court in the case of **Shiv Sarup Gupta v/s. Dr.Mahesh Chand Gupta [(1999) 6 SCC 222** wherein it is held that if the landlord's need can be said to be natural, real, sincere and honest, then it is a bonafide need.

10. Regarding comparative hardship also, the learned advocate Mr.Agarwal for the petitioner, relied upon the same judgment wherein it is held that the landlord cannot be forced to squeeze

into less suitable premises just to protect the tenant's occupancy. It is held in this case that once the court is satisfied of the bona fides of the need of the landlord for the premises or additional premises by applying objective standards then in the matter of choosing out of more than one accommodation available to the landlord his subjective choice shall be respected by the court. The court would permit the landlord to satisfy the proven need by choosing the accommodation which the landlord feels would be most suited for the purpose; the court would not in such a case thrust its own wisdom upon the choice of the landlord by holding that not one but the other accommodation must be accepted by the landlord to satisfy his need.

11. Another judgment of this Court in the case of **Shankar Pandurang Prabhale (deceased) v/s. Vinaychandra Vrujlal Shaha & Anr** reported in **[2003 (1) ALL MR 235]** was relied upon by Mr.Agarwal wherein it is held in paragraphs 4 and 6 that merely because the landlord is in a position to acquire other premises cannot be the basis for denying the relief of possession when he has succeeded in establishing the ground of

reasonable and bonafide requirement.

12. Regarding the tenant being in arrears of rent, the learned advocate Mr.Agarwala relied upon the decision of this Court in the case **Jaypal Bandu Adake and another v/s. Basavali Gurulingappa Mhalank and another** reported in **(1982 Mh.L.J.512)** and contended that "the conditions specified in section 12(3)(b) of the Rent Act have to be strictly observed if the tenant seeks the benefit of that section. The two conditions are that the arrears will be deposited or paid on the first day of hearing and thereafter rent must be paid or tendered in Court regularly till the suit and the appeal, if any, is also decided. The tenant will not be entitled to protection of section 12(3)(b) of the Bombay Rents Act on the ground that the entire amount due has been paid before the judgement and therefore there was substantial compliance with the provisions of section 12(3)(b) of Rents Act." Further it is held in the said judgment that the Court does not have any discretion to accept payment which is made otherwise than in accordance with the requirement of section 12(3)(b) of the Rents Act. Mr.Agarwal, the

learned advocate appearing for the petitioner, therefore contended that in view of the particulars of payment of rent given in the affidavit filed during pendency of the petition and which is not denied by the tenant by filing reply, the petitioner is entitled for a decree on both courts.

13. As against this, Mr.Deshmukh, the learned advocate appearing for the respondent took me through the evidence of the landlord and the tenant at length from the paper book which he made available during the course of arguments and contended that the landlord was having three storied building wherein the premises admeasuring 10 ft. X 33 ft. were already in possession of the landlord for his business whereas on the other hand the tenant/respondent only had the premises admesuring 10 ft. x 10 ft. He also pointed out that the landlord was not certain about the nature of the business which he wanted to start for his son Ramesh; that Ramesh was not examined; that the landlord had sufficient premises for Ramesh to carry on his business and, therefore, the appellate Court turned down the case of the plaintiff on the ground of bonafide

occupation. Regarding comparative hardship, learned advocate Mr.Deshmukh contended that for the similar reasons as quoted above it was the tenant who was to suffer hardship more than the landlord and for that reason also the application of the landlord was rightly rejected.

14. At the outset it has to be stated that the findings of the lower Court that the plaintiff has succeeded in proving his bonafide need was right and correct and, the contra-findings given by the appellate Court for the reasons reproduced by me are totally wrong and perverse. The plaintiff in the plaint has clearly stated that he has five sons and has joint family whereof his sons have become major and it is necessary to make arrangement for their business, particularly, the elder son Ramesh is married and has a daughter but he has no separate place for carrying on his business. Other two children are also required to put in business and, therefore, the petitioner for himself and his family members required the premises for business.

15. When the case of the plaintiff is

absolutely clear regarding his bonafide need and when it is clear that for starting business of his children he had no sufficient other place, then the trial Court has categorically come to the conclusion in favour of the plaintiff regarding bonafide need and, the appellate Court's findings in that regard, being perverse, are liable to be set aside.

16. Mr.Deshmukh, the learned advocate appearing for the respondent, strenuously urged that the premises of the tenant are only 10 ft. x 10 ft. whereas the petitioner has three storied building. But there is an admission of the defendant in his evidence and in the evidence plaintiff that when the suit was filed and the evidence was recorded, the plaintiff's son was carrying on his business on otla which had no rafters and for which notices were issued to him by the municipal council.

17. Second contention of Mr.Deshmukh, the learned advocate for the respondent, was that the suit was filed three years after giving the notice and therefore that was sufficient to doubt the bonafide need of the landlord. I do not find

any force in this contention. Because bonafide need does not mean dire or compelling or imminent need. It is a need with reference to the facts of individual case and one can claim and contend bonafide need with reference to the present circumstances or with reference to the eventuality that may occur in future. Filing a suit three years after the notice does not go against the landlord nor it favours the tenant. The learned advocate for the respondent Mr.Deshmukh also drew my attention to the evidence of the plaintiff wherein he has admitted that in that area of Malegaon city where the suit premises are situated the person would require a substantial amount to hire other premises. Therefore, the learned advocate Mr.Deshmukh contended that if the defendant was required to spend huge amount for acquiring other premises, then that was a aspect rightly considered by the trial court while considering comparative hardship. I do not find any substance in this submission. The question is, whether the need of the landlord is bonafide or not and, in this case it has to be held that the need of the landlord is bonafide. Even if the hardship is to be compared, it tilts more in favour of the

landlord. Because even though the landlord is the owner of the building, the plaintiff's son is required to carry on their business on otla for want of place. Grocery or articles of business, which are kept on otla, are in open place without protection. The otla is of 3 x 12 only or 2 x 6 and every night they have to keep those articles inside and bring them outside on the otla on the next day morning.

18. In support of his contention that the defendant was not carrying on his business, learned advocate Mr.Agarwal appearing for the petitioner, drew my attention to the cross examination of the defendant wherein the defendant has admitted that his business was of stationery and cutlery for wholesale. It was correct that when he was examined court, he had no wholesale business. He also admitted that due to his old age and because other persons from his family were not available for his business, he had reduced his business of wholesale of cutlery and stationery and he was doing retail business. In order to show that the defendant had stopped carrying on his business from the suit premises he was cross examined at length and, the learned

advocate Mr.Agarwal contended that even though sufficient opportunity was given, the defendant could not produce anything to show that he was doing business from the suit premises. For example, the defendant did not produce bills of goods purchased; he had no receipts issued to the customers; he did not maintain stock register, he did not maintain accounts; he did not maintain register for sale and, in fact, he did not maintain daily cash book; he was not paying the sale tax; he had no occasion to show his registers to the Income Tax Department; and he was not even paying professional tax; he could not say since when he had stopped paying the sale tax and professional tax; he could not say when he paid it last.

19. In view of these facts, this is a clear case where the petitioner/plaintiff has succeeded in proving his bonafide and comparative hardship to the landlord then to the tenant.

20. So far as arrears of rent are concerned, I have already stated that there is no reply to the affidavit filed by the petitioner/plaintiff during pendency of petition wherein particulars

of arrears of rent have been given. There are 29 instances. I am reproducing the entire statement of accounts given by the plaintiff on page 48.

THE SCHEDULE OF PAYMENT MADE BY THE PETITIONERS FROM TIME TO TIME IS AS UNDER :-

SR.NO.	DATE	RECEIPT NO.	AMOUNT DEPOSITED.
1.	08.07.82	242	2,200.00
2.	09.06.83	147	120.00
3.	06.01.83	845	300.00
4.	21.02.83	1038	200.00
5.	12.09.83	479	200.00
6.	01.02.84	1043	40.00
7.	27.03.84	1258	40.00
8.	25.04.84	123	120.00
9.	31.07.84	473	160.00
10.	07.11.84	811	120.00
11.	28.01.85	1176	80.00
12.	26.03.85	1451	120.00
13.	26.06.85	278	240.00
14.	07.12.85	944	120.00
15.	02.04.86	26	120.00
16.	02.07.86	294	240.00

17.	28.08.86	482	40.00
18.	20.10.86	677	120.00
19.	28.01.87	1031	80.00
20.	21.03.87	1260	40.00
21.	08.07.87	279	40.00
22.	26.08.87	426	120.00
23.	16.10.87	607	40.00
24.	25.02.88	1045	160.00
25.	09.06.97	1	1,800.00
26.	03.04.98	06	180.00
27.	16.09.98	201	180.00
28.	15.12.00	234	720.00
29.	12.04.01	14	360.00
			==========
			8,300.00
			==========

Looking to this table of payment of rent and the judgments of the High Court which say in clear term that it is incumbent upon the tenant to pay rent regularly and monthly during pendency of the suit and appeal. The case of the plaintiff on that count is also liable to be accepted.

21. In the result, I pass the following order:-

:ORDER:

The petition is allowed.

Rule is made absolute.

The judgments of both the Courts are set aside and decree of eviction is passed against the tenant on the ground of bonafide occupation and habitual default i.e. not paying rent regularly.

Time is granted to the tenant to vacate the premises on or before 1st March 2007 on a condition of his giving undertaking to this Court in writing within four weeks from today. If the tenant fails to give the undertaking in writing to this court within the aforesaid stipulated period, this concession will not survive.

The petition succeeds with costs through out.

[D.G.DESHPANDE, J.]